

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: RULE WAIVERS	DOCKET NO. RMU-00-1
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ORDER ADOPTING RULES

(Issued October 4, 2000)

Pursuant to the authority of Iowa Code §§ 17A.4, 474.5, 476.1, and 476.2(1) (1999), and 2000 Iowa Acts House File 2206, the Utilities Board (Board) adopts the rules attached hereto and incorporated by reference. These rules rescind the former 199 IAC 1.3 and adopt a new 199 IAC 1.3; and adopt a new subrule 199 IAC 2.2(17). The reasons for adoption of these rules are set forth in the notice of intended action published in the Iowa Administrative Bulletin on August 23, 2000, as ARC 0070B.

IT IS THEREFORE ORDERED:

1. The rules attached hereto and incorporated by this reference are adopted by the Board.

2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin an adopted and filed notice in the form attached to and incorporated by reference in this order.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

/s/ Diane Munns

Dated at Des Moines, Iowa, this 4th day of October, 2000.

UTILITIES DIVISION [199]

Adopted and Filed

Pursuant to Iowa Code section 17A.4(1)"b," the Utilities Board (Board) gives notice that on October 4, 2000, the Board issued an order in Docket No. RMU-00-1, In re: Rule Waivers, "Order Adopting Rules," that rescinded the former waiver rule and adopted new waiver rules.

On July 31, 2000, the Board issued an order commencing a rule making to receive public comment on the rescission of the Board's waiver rule at 199 IAC 1.3 and the adoption of new waiver rules at 199 IAC 1.3 and 2.2(17). Notice of Intended Action was published in the Iowa Administrative Bulletin on August 23, 2000, as ARC 0070B.

The new waiver rule is intended to modify the existing waiver rule by implementation of changes in 2000 Iowa Acts, House File 2206 and Executive Order Number 11, insofar as the Executive Order conforms to 2000 Iowa Acts, House File 2206. The new rules also contain a waiver request form.

On September 12, 2000, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a written Statement of Position in support of the proposed rule. Also on September 12, 2000, the Iowa Association of Municipal Utilities filed a written comment agreeing with the proposed rules and stating it believed the rules were fully consistent with 2000 Iowa Acts, House File 2206.

The final rules are identical to those published under the Notice of Intended Action.

These rules are intended to implement Iowa Code chapters 17A, 474, and 476, and 2000 Iowa Acts, House File 2206. These rules will become effective December 6, 2000.

The following rules are adopted.

Item 1. Rescind rule 199—1.3(17A,474) and adopt the following new rule in lieu thereof:

199—1.3(17A,474,476,78GA,HF2206) Waivers. In response to a request, or on its own motion, the board may grant a waiver from a rule adopted by the board, in whole or in part, as applied to a specific set of circumstances, if the board finds, based on clear and convincing evidence, that:

1. The application of the rule would pose an undue hardship on the person for whom the waiver is requested;
2. The waiver would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to a petition for waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the rule for which the waiver is requested.

The burden of persuasion rests with the person who petitions the board for the waiver. If the above criteria are met, a waiver may be granted at the discretion of the board upon consideration of all relevant factors.

Persons requesting a waiver may use the form provided in 199—subrule 2.2(17), or may submit their request as a part of another pleading. The waiver request must state the relevant facts and reasons the requester believes will justify the waiver, if they have not already been provided to the board in another pleading. The waiver request must also state the scope and operative period of the requested waiver. If the request is for a permanent waiver, the requester must state reasons why a temporary waiver would be impractical.

The waiver shall describe its precise scope and operative period. Grants or denials of waiver requests shall contain a statement of the facts and reasons upon which the decision is based. The board may condition the grant of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question. The board may at any time cancel a waiver upon appropriate notice and opportunity for hearing.

This rule is intended to implement Iowa Code chapters 17A, 474, and 476 and 2000 Iowa Acts, House File 2206.

Item 2. Amend 199—2.2(17A, 474) by adopting the following **new** subrule:

2.2(17) Waiver request.

STATE OF IOWA
BEFORE THE IOWA UTILITIES BOARD

}	DOCKET NO. (insert docket no.)
(insert case title)	WAIVER REQUEST

COMES NOW (insert name of person requesting the waiver), and files this request for a waiver, and in support states:

1. (Insert the specific waiver requested, including a citation to the specific rule the requester wants to be waived, and the precise scope and operative period of the requested waiver. If the request is for a permanent waiver, state the reasons why a temporary waiver would be impractical.)
2. (Insert the relevant facts and reasons that show each of the following: (a) the application of the rule would pose an undue hardship on the person for whom the waiver is requested; (b) the waiver would not prejudice the substantial legal rights of any person; (c) the provisions of the rule subject to a petition for waiver are not specifically mandated by statute or another provision of law; and (d) substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the rule for which the waiver is requested.)
3. (Insert the names of the persons who may be adversely impacted by the grant of the waiver, if known.)

WHEREFORE, (insert name of requester) prays the board grant the request for a waiver of the rule specified above.

Respectfully submitted,

(Signature of Requestor)
(Name)
(Address and Zip Code)

October 4, 2000

/s/ Allan T. Thoms
Allan T. Thoms, Chairperson